

WRITTEN TESTIMONY OF NANCY BAKER

POOL SAFETY: THE TENTH ANNIVERSARY OF  
THE VIRGINIA GRAEME BAKER POOL AND SPA  
SAFETY ACT

MAY 24, 2017 SUBCOMMITTEE HEARING

SENATE COMMITTEE ON COMMERCE, SCIENCE  
AND TRANSPORTATION

SUBCOMMITTEE ON CONSUMER PROTECTION,  
PRODUCT SAFETY, INSURANCE AND DATA  
SECURITY

## I. Introduction

I would like to thank Chairman Thune, Senator Moran and Senator Blumenthal for holding this hearing. You have brought together important partners and stakeholders to celebrate the anniversary of the Virginia Graeme Baker Pool and Spa Safety Act. It is an honor to be here to testify, in memory of a child I dearly miss, and on behalf of many who remain committed to the safety and well being of children. I'm pleased that some who worked on the passage of this legislation ten years ago are in attendance today. I'd like to recognize the hard work and commitment of my friend, a man of great character and a champion for children, Alan Korn. Early on, I partnered with him and Safe Kids Worldwide and I could not have done my work without him. I also want to thank Senator Klobuchar, Congresswoman Debbie Wasserman-Schultz and countless staff and private citizens who were unwavering in their support of its intent and played an instrumental part in the passage of this legislation. To this day I am comforted by the fact that so many good people came together in a concerted effort to make sure that what happened to my daughter would not happen to another child.

## II. Graeme's Story

It was never my intention to become involved in drowning prevention. I am a mother of five and being a parent to my five girls has been the joy and challenge of my life. I am also an artist and for many years have pursued that as a vocation and profession. However, on June 15<sup>th</sup>, 2002, I became an advocate for pool safety, when my seven-year-old daughter, Graeme, drowned in a residential pool during a large gathering to honor graduating high school students. On that day, with well over fifty people gathered for a backyard barbeque around a pool, one of my children ran to me in horror to tell me that her sister was at the bottom of a pool spa directly connected to the pool. I ran with her to the edge of this spa and could not see into the water, as it was painted dark blue and the bubbling water obscured the surface. She literally disappeared in a moment, drowned in four feet of water and none of the dozens gathered on the pool deck, including me, saw it happening. Her older sister screamed that she was there and I jumped in, went underwater and discovered my child at the bottom. I tried to pull her up and was unable. I kept coming up for air, screaming for help and attempting to pull her to the surface. It was impossible. Graeme, an excellent swimmer, member of our neighborhood dive team had slipped underwater and become entrapped on the flat drain of this spa. She sat on the drain, her buttocks sealing it and that resulted in a tremendous vacuum, pinning her to the bottom with over seven hundred pounds of pressure. She was helpless in getting free from the force at the drain and in the end it took two adults to release her. She was flown to Fairfax Hospital and there I was told that the doctors had been unable to revive her and that she'd died. It took years to understand and absorb what had happened. I experienced a grief so long and dark. My children, our family and our community all suffered from the trauma of her loss.

It was a horrific accident and in time I gained understanding of the many things that contributed to her death. At the party there was no lifeguard, or person whose sole responsibility was to watch the water. This spa was old, built with a single drain that was attached to the pool pump and once blocked, the pump continued to pull water, then air, leaving her body cemented to the drain. The tub was painted like a lagoon, bubbles created by the jets, making it impossible to see beneath the surface. There was no emergency pump shut off or device that could detect the sudden change in the pressure to free her.

### III. Into Advocacy

When our family arrived for her funeral, her grandfather, James A. Baker III, devastated by the circumstances of her death and the collective sorrow of her loss, pulled me aside and asked me to try to do something to address this danger. He offered to help me in any way he could. It did take time, as my children needed me as never before and we had a lot of healing to do. Yet along the way, seeking some greater understanding, I began to research this issue and learned that for years these accidents had been occurring and as a result technology and design advancements had been developed that, if installed, would prevent entrapments. However, they were not widely used and building codes and standards were inconsistent from one jurisdiction to the next.

Early in 2004, I visited the offices of Safe Kids Worldwide, which I had read was dedicated to preventing accidental death and injury of children. I told them what had happened to my daughter and in time we agreed to work together to address entrapment and other forms of drowning. The number of children that died in drowning accidents of all kinds was staggering and I felt compelled to be one authentic voice in an effort to address it. I wanted to share our experience, to honor my daughter's memory and somehow allow her death to serve as a catalyst to prevent death and injury to others.

It was on May 3<sup>rd</sup>, 2006, that I had the privilege of appearing before this committee to testify and provide a written statement urging Congress to act on behalf of children to ensure their safety in pools and spas. Some of you may remember that Senator Ted Stevens, Chairman of the Commerce Committee, after hearing testimony that day describing the pervasive loss of life by drowning, announced to all in the room that the committee would act. George Allen, then Chairman of the subcommittee, followed through. It was their leadership and commitment that gave rise to the effort of so many to ultimately craft a bill whose passage we are celebrating today.

The role of government in many issues relating to the safety of children is without question a critical one. In so many instances; vaccinations, smoke alarms, car safety and many others the government has played a critical and active role in establishing standards to protect children in response to an immediate threat. The Virginia Graeme Baker Pool and Spa Safety Act is one such effort and it is an example of many constituencies working together, engaging in debate and reconciliation in order to remedy a public health crisis. With specificity, in the form of mandated

changes in design and installation, the legislation addressed entrapment and all of us here can celebrate the fact that since its passage not one child has died due to entrapment in a public pool. Prior to this becoming law, each year there were several reported incidences, some of which were fatal, one more violent and horrifying than the next.

VGB is a shining example of government working the way it is supposed to, to protect children. Ten years ago, members of Congress, stakeholders, industry representatives and parents all worked together toward a common goal and the validity of that effort has been affirmed by the statistics.

#### IV. Remaining Work To Be Done

As encouraged as I am by the elimination of incidences of entrapment in public pools, I am also aware, given the reported number of deaths due to the more traditional forms of drowning, that there remains work to be done. VGB insisted on the manufacture and sale of anti-entrapment drain covers and on their installation in public pool environments. It requires multiple layers of protections to be installed in public pools, depending upon the inherent risks in their construction and design. These requirements have eliminated the possibility of entrapment in compliant public pool settings. The changes and regulations that apply to these pools do not extend to private pools. The risk of entrapment remains and we, as citizens and concerned parents, must rely on pool industry leaders and safety advocates to apply these same safeguards in the maintenance and construction of existing and new pools.

Another important aspect of the legislation is the public safety education program enacted by the CPSC, entitled Pool Safely, which involves PSA's, partnerships with local organizations and a vital authoritative voice to educate the public on drowning prevention. I recently gave a keynote address at the National Drowning Prevention Alliance, where I listened to a presentation by members of an organization called Families United Against Drowning. Each family testified to the acting Chairman of the CPSC, sharing the specific circumstances of their child's tragic death. The vast majority had died due to an unintentional and momentary lapse of supervision either within the home or backyard where an innocent child gained unfettered access to a backyard residential pool. There was a resounding and repeated message from those parents; that everyone in the home thought they knew where the child was, that it happened in a silent moment, that they had felt that it could never happen here, that it had been their intention to build a barrier to the pool, that the alarms on the doors had been disarmed, that a gate had inadvertently been left open. I am committed to becoming part of an effort to address this tragic loss of life. There is no doubt that the work of private foundations and organizations, as well as the Pool Safely program of the CPSC has had a positive impact. We will never know the lives that have been saved; yet we do know that swimming lessons, drowning prevention awareness and education in active supervision are critical in saving lives. Yet the tragic statistics on drowning indicate that further action needs to be pursued by public, private and industry partners.

Still today, far too many are suffering permanent disability or dying as a result of accidents occurring in pools and spas across this country. The following is an excerpt of recent information published by the Centers for Disease Control and Prevention:

**Drowning** is a leading cause of unintentional injury death worldwide, and the highest rates are among children. Overall, **drowning** death rates in the United States have declined in the last decade; however, **drowning** is the leading cause of injury death among children aged 1–4 years. May 2, 2016

- From 2005-2014, there were an average of 3,536 fatal unintentional drownings (non-boating related) annually in the United States — about ten deaths per day. An additional 332 people died each year from drowning in boating-related incidents.
- About one in five people who die from drowning are children 14 and younger. For every child who dies from drowning, another five receive emergency department care for nonfatal submersion injuries.
- More than 50% of drowning victims treated in emergency departments (EDs) require hospitalization or transfer for further care (compared with a hospitalization rate of about 6% for all unintentional injuries). These nonfatal drowning injuries can cause severe brain damage that may result in long-term disabilities such as memory problems, learning disabilities, and permanent loss of basic functioning (e.g., permanent vegetative state).

I believe that the positive outcome of the legislation we celebrate today in addressing entrapment can be attributed to the national public safety campaign, the efforts of dedicated private drowning prevention foundations and organizations and the mandated requirements that the legislation prescribed. I am inspired by the work of the CPSC, the Zac Foundation and Abbey's Hope. I would like to see that multi-faceted approach taken in order to address the loss of life due to children having access to pools in their own homes. We know that it's been effective. I believe that the government has a role to play in setting a safety standard, which in time will create a new cultural norm. Were there to be a requirement that new pools be built to include four sided, barrier fencing, self closing and locking gates and alarm systems I have no doubt that innocent lives would be saved. In doing so, a solution to a seemingly intractable threat to children's health would be met by a specific solution, which public and private entities could unite on to foster consistency in drowning prevention and a framework for innovative pool design and construction driven by safety first.

## V. Conclusion

Please, let us move courageously to address the huge loss of life that continues to occur from coast to coast in this country. This is not political or ideological. These

are adults and they are our children. Children alone are drowning at a rate of two per day. Most are dying in their own backyards. It is a fact that each aspect of the multi-pronged approach to entrapment contributed to the success of the Virginia Graeme Baker Pool and Spa Safety Act in this area of drowning prevention. I am convinced that were there a similar requirement, a specific standard set, regarding barrier fencing in private pools, we would see a greater positive impact on the overall incidences of childhood drowning. Residential pools would then conform to two realities; that what we value most is life itself and that we understand and have addressed the inherent risk involved in pools. In the future, it is my hope that new pool design and construction will serve to reflect these life saving principles.

It is my great honor to appear in this important hearing and I hope to be a continued advocate and partner with all of those in attendance today to maintain and ensure the continued success of the Virginia Graeme Baker Pool and Spa Safety Act and to strengthen provisions within it to proactively and courageously address the continued risk of drowning. I offer my sincere thanks to those of you who are members of this committee and work every day to protect our children. It's my hope that you will contact me to provide any assistance you may need in your efforts to reduce drowning accidents across the country. I want to do what I can for you, for my daughter, for the memory of the many children who have died and for those who won't due to your leadership. This hearing alone represents a tremendous shift in the recognition of drowning as the significant public health emergency that it is.